

REMARKS

This paper is submitted in reply to the Official Action dated May 3, 2006 and concurrently with an RCE. Also submitted and forming a part of these remarks are copies of pages from the applicant's website which further illustrate the nature and operative use of the inventive mortarboard. These supplemental pages begin after page 12 of the remarks.

The previously pending claims 1-28 have been cancelled without prejudice or disclaimer. New claims 29-64 are being submitted in their place. Claims 29-64 more clearly recite applicant's invention and further distinguish his invention over the heretofore cited art.

The art cited to date, and in particular the art cited in the last Office Action, is not particularly relevant to applicant's invention. Applicant's invention is a "mortarboard" configured for operative use by masons and brick layers at a construction site, particularly in the building construction industry. This use is now clearly set forth in the preamble of the newly submitted independent claims 29 and 44. Referring to the Appendix, page 1 thereof, one of applicant's mortarboards configured according to the principles of this invention is illustrated as being used at a construction site. In the construction industry, mortar is carried to and shoveled onto the mortarboard by a worker typically referred to as a mason tender. It is his job to provide good, usable mortar to the mason/brick layer. In this first picture illustrated, one or more shovel fulls of mortar have been deposited on the mortarboard. The mortar can rapidly change its conditions while on the mortarboard due to a number of factors such as temperature, humidity, wind, and the like. The mason/brick layer continuously "works" the mortar on the mortarboard while he is laying bricks or blocks at the particular jobsite. Such working typically involves mixing and stirring the mortar on the mortarboard surface with a trowel, such as shown in the picture. It is important during such operations to retain the original moisture in the mortar that was deposited on the mortarboard. As stated in applicant's application, prior art mortarboards were not particularly conducive to retaining such moisture, due to their material and/or construction. Applicant's invention particularly addresses such shortcomings of the prior art.

The second page of the Appendix shows another view of the applicant's mortarboard in operative use and the function of the cut-out handle which allows the mortarboards to be easily transported around the jobsites in a generally vertical manner when not in use, as shown by the

person carrying three of such boards. Alternatively, as described in the application, a large quantity of such mortarboards can be transported by a forklift by placing them on a tine of the forklift and lifting them up to the bricklayer/mason who is typically standing on a scaffold adjacent the wall or structure he is constructing.

The third page of the Appendix illustrates the upper working surface and lower ribbed surface of a preferred embodiment of applicant's invention, and further discusses a number of the features of the mortarboard which makes it particularly user friendly for a mason/bricklayer at a construction site. As shown on the fifth page of the Appendix, applicant's mortarboard won the "Most Innovative Product" award at the 2005 World of Concrete & Masonry Tradeshow from both the "Attendees Choice" and the "Experts Choice" classifications. Since the introduction of his mortarboard to the industry, the applicant has sold over 32,000 of such mortarboards, and the orders for his product are continually increasing. Several customer endorsements of applicant's inventive mortarboard are shown on pages 5 and 6 of the Appendix.

The above materials of the Appendix have been submitted to assist the Examiner in understanding the nature and use of the inventive mortarboard product. Such use is now clearly recited in the claims currently of record, and clearly distinguishes over all prior references cited by the Examiner during the previous prosecution of this application. There is absolutely no motivation in the most recent art cited by the Examiner to combine such art in any manner or to use any of the individual pieces of cited art in a manner that could possibly be used by masons and bricklayers and others skilled in the art, as a mortarboard for holding, mixing and conditioning cementitious mortar at a construction site.

The Netsch reference cited by the Examiner is a laundry detergent or coffee scoop of flimsy material that has absolutely no applicability for the handling or conditioning of mortar at a construction site. Similarly, the serving tray of the Tabb design patent has no applicability as a mortarboard. The Malvasio reference which is a taco plate configured with a plurality of corrugations in its upper surface to hold taco shells, does not provide the type of generally planar or flat surface having the broad extent that would enable the mason or bricklayer to sweep his trowel through the mortar in unimpeded free-mixing manner.

The claims, as now rewritten, clearly distinguish over the art most recently cited by the Examiner, as well as any of the art of record. Further, there is no motivation set forth in any of the art of record that would lead one skilled in the construction art to combine any teachings or disclosures of the various references in order to achieve applicant's claimed invention.

The preambles of independent claims 29 and 44 now clearly describe the industry and intended use of applicant's mortarboard, as being a mortarboard that is configured for operative use by masons and bricklayers at a construction site. Subparagraphs (a) of claims 29 and 44 further now recite a structural durability requirement, that the sheet material comprising the mortarboard has an outermost thickness dimension of at least 0.5 inches. None of the art (Netsch, Tabb or Malvasio) cited by the Examiner disclose a material having such dimensions or structural strength, and for that reason alone, applicant's claimed invention clearly distinguishes over such art of record.

Claim 29 requires that upper working surface of the mortarboard to be broad, continuous and substantially flat as well as being impervious, so as to retain the moisture in the mortar. None of the three references cited by the Examiner have such substantially flat upper working surfaces.

Claim 29 (c) further requires a cut-out handle portion formed entirely through the sheet material and sized to accept an adult person's hand or fork-lift tine for carrying the mortarboard. Either Netsch nor Malvasio have any type of such cut-out handle. The Tabb reference illustrates cut-out handles; however it does not include the recitations of paragraphs (a) and (b) of claim 29, and simply is not intended for use as a mortarboard at a construction site. The dependent claims 30-43 include further limitations of applicant's invention, none of which are disclosed individually or in combination by the art of record.

Besides those features previously discussed with respect to claim 44, claim 44 further describes that the sheet material forming the mortarboard is "slightly contoured across said upper working surface in dished-out manner to form a single continuous arcuate contour across the working surface". None of three references cited by the Examiner in her most recent Office Action, nor any of the other prior art of record discloses such a contoured upper working surface. There is no disclosure of any contoured surface in the Tabb reference. The Malvasio reference

does not have a single arcuate contour surface extending across the entire working surface, but comprises a plurality of undulating surfaces that would not be suitable for mixing of mortar by a mason or bricklayer. The Netsch scoop structure does not have a slightly contoured surface as required by applicant's claims. In contrast, the Netsch reference by its nature is more contoured than flat since its very use is as a scoop to retainably hold a measured quantity of coffee, detergent, or the like. As a matter of fact, when in its extended position the depth of the Netsch contour is about three times that of its original thickness. Further, the contoured surface of Netsch is not solid as now required by applicant's claim 44. In contrast, the Netsch structure is expandable and pliable, between a relatively flat scoop structure in an unexpanded state and a severely contoured configuration to define a volume scoop, in its expanded state. The expandable nature of the Netsch scoop certainly takes it out of the realm of a smooth "solid" upper working surface as required by applicant's claim 44.

For the above reasons, and others, applicant's claim 44 is neither anticipated by nor rendered obvious by any of the art of record. Claims 45-60, which depend from claim 44, and necessarily include the limitations thereof are also now believed to be in proper form for allowance.

Claims 61-64 represent method claims for use of a mortarboard structure configured according to the principles of this invention, and are believed to be in proper form for allowance for those reasons previously discussed with respect to the apparatus claims.

For the above reasons, applicant submits that all of the claims remaining in the application are now in proper form for allowance and respectfully requests favorable consideration and allowance thereof.

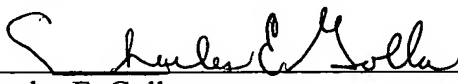
Applicant has made a significant contribution to the art of mortarboard construction, which is being recognized by masons and cement contractors in the industry as evidenced by the amount of sales of applicant's mortarboard product since its introduction to the market, and by his award of the "most innovative product", in an industry that goes back centuries in time. Applicant submits that his contribution to the art should not be diminished by hindsight arguments that cannot be fairly supported by the prior art, and respectfully requests forthwith allowance of all claims remaining in the application.

If the Examiner has any questions regarding the claims, the application or the arguments and comments made herein, she is respectfully requested to telephone applicant's undersigned attorney Charles C. Golla at 612-336-4786 to discuss any issues, questions or concerns she may have.

Respectfully submitted,

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